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JUN - 9 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-300

In the Supreme Court of the United States

ERNST & YOUNG LLP, ET AL., PETITIONERS

v.

STEPHEN MORRIS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: SEPTEMBER 8, 2016
CERTIORARI GRANTED: JANUARY 13, 2017

TABLE OF CONTENTS

Page

Court of appeals docket entries 1

District court docket entries 8

Amended class action complaint, Apr. 11, 2012 (D. Ct. Dkt. 12) 14

E&Y Common Ground Dispute Resolution Program, Apr. 25, 2006 (D. Ct. Dkt. 42-4) 36

The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, Aug. 22, 2016
Appendix B:	District court order, July 9, 2013
Appendix C:	District court judgment, July 23, 2013

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13-16599

STEPHEN MORRIS, and KELLY MCDANIEL, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

v.

ERNST & YOUNG, LLP, and ERNST & YOUNG U.S., LLP,
Defendants-Appellees.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
08/07/2013	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 08/14/2013. Transcript ordered by 09/06/2013. Transcript due 10/07/2013. Appellants Kelly McDaniel and Stephen Morris opening brief due 11/15/2013. Appellees Ernst & Young U.S., LLP and Ernst & Young, LLP answering brief due 12/16/2013. Appellant's optional reply brief is due 14

DATE	NO.	PROCEEDINGS
		days after service of the answering brief. [8734384] (GR) [Entered: 08/07/2013 12:34 PM]
		* * * * *
07/16/2014	12	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant Stephen Morris. Date of service: 07/16/2014. [9172231] -- [COURT UPDATE: Attached corrected brief. 7/18/2014 by TL] (Libenson, Ross) [Entered: 07/16/2014 07:02 PM]
		* * * * *
09/12/2014	18	Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by Appellees Ernst & Young U.S., LLP and Ernst & Young, LLP. Date of service: 09/12/2014. [9238809] (Heinke, Rex) [Entered: 09/12/2014 01:12 PM]
		* * * * *
10/24/2014	25	Submitted (ECF) Reply Brief for review. Submitted by Appellant Stephen Morris. Date of service: 10/24/2014. [9290360] -- [COURT UPDATE: Attached corrected brief. 10/29/2014 by TL] (Folkenflik, Max) [Entered: 10/24/2014 05:15 PM]

DATE	NO.	PROCEEDINGS
		* * * * *
10/28/2015	35	Filed (ECF) National Labor Relations Board Motion to become amicus curiae. Includes proposed additional citations. Date of service: 10/28/2015. [9736393] [13-16599] -- [COURT UPDATE: Updated docket text to reflect correct ECF filing type. 10/28/2015 by TYL] (Thomas, Paul) [Entered: 10/28/2015 02:10 PM]
		* * * * *
10/28/2015	37	Filed (ECF) Appellant Stephen Morris citation of supplemental authorities. Date of service: 10/28/2015. [9736490] [13-16599] (Folkenflik, Max) [Entered: 10/28/2015 02:42 PM]
10/28/2015	38	Filed (ECF) Appellant Stephen Morris Correspondence: Request for Judicial Notice. Date of service: 10/28/2015 [9736502] [13-16599] (Folkenflik, Max) [Entered: 10/28/2015 02:47 PM]
		* * * * *
10/29/2015	43	Filed (ECF) Appellees Ernst & Young U.S., LLP and Ernst & Young, LLP response opposing motion ([35] Motion (ECF Filing), [35] Motion (ECF Filing) motion to become amicus). Date of service:

DATE	NO.	PROCEEDINGS
		10/29/2015. [9738525] [13-16599] (Heinke, Rex) [Entered: 10/29/2015 04:05 PM]
10/30/2015	44	Filed order (SIDNEY R. THOMAS, SANDRA S. IKUTA and ANDREW D. HURWITZ) The motion of the National Labor Relations Board ("Board") for leave to file an amicus curiae brief is GRANTED. The amicus material submitted on October 28, 2015 shall be filed. The Board is also permitted to file a formal amicus brief with the Court on or before November 6, 2015. The brief may not exceed 7000 words. If the Board elects to file an amicus brief, the parties are permitted to file supplemental response briefs on or before November 13, 2015. These supplemental briefs may not exceed 3500 words. [9738959] (OC) [Entered: 10/30/2015 09:32 AM]
		* * * * *
11/06/2015	52	Submitted (ECF) Amicus Brief for review. Submitted by Amicus Curiae NLRB. Date of service: 11/06/2015. [9747668] [13-16599] (Vol, Kira) [Entered: 11/06/2015 12:27 PM]
		* * * * *

DATE	NO.	PROCEEDINGS
11/06/2015	54	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by LABOR LAW SCHOLARS. Date of service: 11/06/2015. [9747925] [13-16599] (Rothner, Glenn) [Entered: 11/06/2015 02:17 PM]
		* * * * *
11/13/2015	56	Submitted (ECF) Supplemental Brief for review. Submitted by Appellees Ernst & Young U.S., LLP and Ernst & Young, LLP. Date of service: 11/13/2015. [9755516] [13-16599] – [COURT UPDATE: Updated docket text to reflect correct brief type. 11/13/2015 by TYL] (Heinke, Rex) [Entered: 11/13/2015 04:23 PM]
		* * * * *
11/13/2015	58	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Stephen Morris. Date of service: 11/13/2015. [9755760] [13-16599] – [COURT UPDATE: Attached corrected brief. 11/17/2015 by TYL] (Folkenflik, Max) [Entered: 11/13/2015 07:27 PM]
		* * * * *
11/17/2015	61	ARGUED AND SUBMITTED TO SIDNEY R. THOMAS, SANDRA

DATE	NO.	PROCEEDINGS
		S. IKUTA and ANDREW D. HURWITZ. [9758775] (JT) [Entered: 11/17/2015 01:13 PM]
		* * * * *
06/02/2016	63	Filed (ECF) Appellants Kelly McDaniel and Stephen Morris citation of supplemental authorities. Date of service: 06/02/2016. [9999571] [13-16599] (Folkenflik, Max) [Entered: 06/02/2016 09:57 AM]
06/07/2016	64	Filed (ECF) Amicus Curiae NLRB citation of supplemental authorities. Date of service: 06/07/2016. [10005210] [13-16599] (Platt, Nancy) [Entered: 06/07/2016 01:17 PM]
06/13/2016	65	Filed (ECF) Appellees Ernst & Young U.S., LLP and Ernst & Young, LLP citation of supplemental authorities. Date of service: 06/13/2016. [10012908] [13-16599] (Heinke, Rex) [Entered: 06/13/2016 03:36 PM]
08/22/2016	66	FILED OPINION (SIDNEY R. THOMAS, SANDRA S. IKUTA and ANDREW D. HURWITZ) Putative-amici labor scholars' motion for leave to file an amicus brief is denied. See Fed. R. App. P. 29(e). The motion for judicial notice of additional authorities is also denied. See Louis Vuitton Malletier, S.A. v.

DATE	NO.	PROCEEDINGS
		Akanoc Sols., Inc., 658 F.3d 936, 940 n.2 (9th Cir. 2011). REVERSED AND REMANDED; Judge: SRT Authoring, Judge: SSI Dissenting, FILED AND ENTERED JUDGMENT. [10094519] (RMM) [Entered: 08/22/2016 06:57 AM]
		* * * * *
09/21/2016	70	MANDATE ISSUED.(SRT, SSI and ADH) [10131425] (MT) [Entered: 09/21/2016 01:18 PM]

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 12-CV-04964-JSW

STEPHEN MORRIS, and KELLY MCDANIEL, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

ERNST & YOUNG, LLP, and ERNST & YOUNG U.S., LLP,
Defendants.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
02/02/2012	1	COMPLAINT against Ernst & Young U.S., LLP, Ernst & Young, LLP. (Filing Fee $ 350.00, Receipt Number 465401028628) Document filed by Stephen Morris. (mro) (ama). (Entered: 02/06/2012)
		* * * * *
04/11/2012	12	AMENDED COMPLAINT amending 1 Complaint against Ernest & Young U.S., LLP, Ernst & Young, LLP with JURY DEMAND. Document filed by Stephen Morris, Kelly McDaniel. Related

DATE	NO.	PROCEEDINGS
		document: 1 Complaint filed by Stephen Morris. (mro) (ama). (Entered: 04/11/2012)
		* * * * *
05/08/2012	24	MOTION to Transfer Case */Venue.* Document filed by Ernst & Young U.S., LLP, Ernst & Young, LLP. (Knopp, Gregory) (Entered: 05/08/2012)
		* * * * *
05/09/2012	30	ANSWER to 12 Amended Complaint. Document filed by Ernst & Young U.S., LLP, Ernst & Young, LLP. (Knopp, Gregory) (Entered: 05/09/2012)
		* * * * *
06/12/2012	33	MEMORANDUM OF LAW in Opposition re: 24 MOTION to Transfer Case */Venue.* Document filed by Kelly McDaniel, Stephen Morris. (Folkenflik, Max) (Entered: 06/12/2012)
		* * * * *
06/22/2012	35	REPLY MEMORANDUM OF LAW in Support re: 24 MOTION to Transfer Case */Venue.* Document filed by Ernst & Young U.S., LLP, Ernst & Young, LLP. (Knopp, Gregory) (Entered: 06/22/2012)

DATE	NO.	PROCEEDINGS
09/11/2012	36	OPINION AND ORDER: re: 24 MOTION to Transfer Case /*Venue.* filed by Ernst & Young U.S., LLP, Ernst & Young, LLP. For the foregoing reasons, Defendants' Motion to Transfer Venue to the Northern District of California is GRANTED. The Clerk of Court is directed to close this case. Any pending motions are moot. (Signed by Judge Kimba M. Wood on 9/10/2012) (jfe) (Entered: 09/11/2012)
09/11/2012		CASE TRANSFERRED OUT ELECTRONICALLY from the U.S.D.C. Southern District of New York to the United States District Court - Northern District of California. (jfe) (Entered: 09/18/2012)
		* * * * *
01/11/2013	42	MOTION TO DISMISS OR in the ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION filed by Ernst & Young L.L.P. Motion Hearing set for 2/15/2013 09:00 AM in Courtroom 6, 4th Floor, San Jose before Hon. Ronald M. Whyte. Responses due by 1/25/2013. Replies due by 2/1/2013. (Attachments:# 1 Declaration Daria Hodapp ISO Motion to Dismiss, # 2 Exhibit A to Decl. of Daria Hodapp, # 3 Exhibit B to

DATE	NO.	PROCEEDINGS
		Decl. of Daria Hodapp, # 4 Exhibit C to Decl. of Daria Hodapp, # 5 Declaration Ingrid McGuire ISO Motion to Dismiss, # 6 Exhibit A to Decl. of Ingrid McGuire, # 7 Exhibit B to Decl. of Ingrid McGuire, # 8 Exhibit C to Decl. of Ingrid McGuire, # 9 Exhibit D to Decl. of Ingrid McGuire, # 10 Exhibit E to Decl. of Ingrid McGuire, # 11 Declaration Gregory W. Knopp ISO Motion to Dismiss, # 12 Exhibit A to Decl. of Gregory W. Knopp, # 13 (Proposed) Order) (Knopp, Gregory) (Filed on 1/11/2013) Text modified on 1/11/2013 (bw, COURT STAFF). (Entered: 01/11/2013)
		* * * * *
01/28/2013	49	MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS MOTION TO STAY OR COMPEL ARBITRATION re 42 filed by Stephen Morris. (Libenson, Ross) (Filed on 1/28/2013) Text modified on 1/29/2013 (bwS, COURT STAFF). (Entered: 01/28/2013)
		* * * * *
02/04/2013	54	Reply in Support of Motion to Dismiss, or in the Alternative Stay Proceedings and Compel Arbitration re 42 filed by Ernst & Young

DATE	NO.	PROCEEDINGS
		U.S., LLP, Ernst & Young L.L.P. (Attachments: # 1 Declaration of Christopher Petersen ISO Defendants' Reply ISO of Their Motion to Dismiss, # 2 Exhibit A to Declaration of Christopher Petersen, # 3 Exhibit B to Declaration of Christopher Petersen, # 4 Exhibit C to Declaration of Christopher Petersen, # 5 Exhibit D to Declaration of Christopher Petersen, # 6 Exhibit E to Declaration of Christopher Petersen) (Knopp, Gregory) (Filed on 2/4/2013) Modified on 2/5/2013 (bw, COURT STAFF). (Entered: 02/04/2013)
		* * * * *
02/15/2013	56	Minute Entry: Motion Hearing held on 2/15/2013 before Ronald M. Whyte (Date Filed: 2/15/2013) re 42 MOTION to Dismiss, *or in the Alternative, Stay Proceedings and Compel Arbitration* filed by Ernst & Young L.L.P. (Court Reporter Lee-Anne Shortridge.) (jg, COURT STAFF) (Date Filed: 2/15/2013) (Entered: 02/15/2013)
		* * * * *
06/28/2013	62	Statement of Recent Decisions re 49 Opposition/Response to Motion, 54 Reply to Opposition/Response, 42 MOTION to Dismiss, or in the

DATE	NO.	PROCEEDINGS
		Alternative, Stay Proceedings and Compel Arbitration by Ernst & Young L.L.P. (Attachments:# 1 Exhibit-A) (Knopp, Gregory) (Filed on 6/28/2013) Modified on 7/12/2013 (bwS, COURT STAFF). (Entered: 06/28/2013)
07/09/2013	63	Order by Hon. Ronald M. Whyte granting 42 Motion to Dismiss (rmwlcl, COURT STAFF) (Filed on 7/9/2013) (Entered: 07/09/2013)
07/24/2013	64	JUDGMENT Signed by Judge Whyte on 7/24/2013. (rmwlcl, COURT STAFF) (Filed on 7/24/2013) (Entered: 07/24/2013)
08/07/2013	65	NOTICE OF APPEAL and Ninth Circuit Rule 3-2 Representation Statement re 63 Order Granting Motion to Dismiss; 54 Judgment. (Appeal fee of $455 receipt number 0971-7904901 paid.) (Folkenflik, Max) (Filed on 8/7/2013) Text modified on 8/8/2013 (bw, COURT STAFF). (Entered: 08/07/2013)

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

No. 12 CIV 0838

STEPHEN MORRIS, and KELLY MCDANIEL, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

ERNST & YOUNG, LLP, and
ERNST & YOUNG U.S., LLP,
Defendants.

April 11, 2012

AMENDED CLASS ACTION COMPLAINT

(Jury Trial Demanded)

Plaintiffs Stephen Morris ("Morris") and Kelly McDaniel ("McDaniel") (collectively with Morris, "Plaintiffs"), by their attorneys, Folkenflik & McGerity and Hoffman & Lazear, for themselves, and on behalf of all others similarly situated, make the following allegations upon personal knowledge as to each of Plaintiffs for their own acts and facts, and upon information and belief as to all other matters. Plaintiffs brings this class and collective action on behalf of those who suffered damages as a result of the violations of the Federal Fair Labor Standards Act,

and the laws of California, and as a result of other wrongful conduct and improper labor practices committed by Defendant Ernst & Young LLP and Defendant Ernst & Young U.S., LLP (collectively, "Defendants" or "E&Y") and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs brings this lawsuit as a collective action under Section 16(b) of the Federal Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §16(b), and as a class action pursuant to Federal Rules of Civil Procedure Rule 23. The persons Plaintiffs seek to represent are junior accountants: (a) current and former Non-Licensed Senior 1 and Senior 2 (as defined by Defendants) who have been employed by E&Y to perform audits ("Covered Positions") in the United States at any time since January 24, 2009 (the "Federal Eligibility Period"), whom Defendants failed to and continue to fail to pay overtime for work performed in excess of forty (40) hours per week as required by Federal law (the "FLSA Collective"); and (b) current and former Non-Licensed Senior 1, Senior 2, Staff 1 and Staff 2 (hereinafter collectively referred to as "Non-Licensed Seniors and Staff") who have been employed by E&Y in the United States and inside of the State of California at any time since September 15, 2001 (the "California Eligibility Period") whom Defendants failed to and continue to fail to pay overtime for work performed in excess of forty (40) hours per week as required by California law (the "California Class") (together with the FLSA Collective, the "Classes").

2. The Plaintiffs seek to represent classes of persons who are so numerous that the joinder of each member of the class is impracticable.

3. There is a well-defined community of interest in the questions of law and fact affecting the classes and the unnamed plaintiffs which these Plaintiffs seek to represent. The class members' claims against Defendants involve questions of common or general interest, in that their claims are based on Defendants' implementation and utilization of policies pursuant to which all members of the classes were denied payment of wages, overtime compensation during the time in question. These questions are such that proof of a state of facts common to the members of the class will entitle each member of the class to the relief requested in this Complaint.

4. The Plaintiffs will fairly and adequately represent the interests of the Classes, because the Plaintiffs are members of each of the Classes and the claims of the Plaintiffs are typical of those in each of the Classes.

5. Defendants violated the FLSA, 29 U.S.C. §207, by failing to pay members of the FLSA Collective overtime pay for a work week longer than forty (40) hours.

6. Defendants violated Wage Order No. 4 of the California Industrial Welfare Commission ("California Wage Law") which provided during all relevant times that "non-exempt employees must be paid an overtime premium for all hours worked in excess of eight during the workday and in excess of 40 during the workweek, as well as for work performed on the seventh workday in a work week."

7. By failing to pay their Non-Licensed Seniors and Staff in California any such overtime compensation, Defendants violated the rights of their employees in California under California Wage Law.

8. As a result of Defendants' violation of the California and Federal labor laws, Plaintiffs and the members of the Classes were unlawfully under-compensated for their

work, and are entitled to compensatory damages and statutory penalties.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. §1331, the Federal statute in question being the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and 28 U.S.C. §1367(a) as to the claims arising under state law.

10. This Court also has subject matter jurisdiction over all claims pursuant to 28 U.S.C. §1331(d), the Class Action Fairness Act of 2005. On information and belief, the district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000.00, exclusive of interest and costs. This action is a class action and, on information and belief, one or more members of the classes of plaintiffs on whose behalf this action is brought is a citizen of a state different from the Defendants.

11. The United States District Court for the Southern District of New York is proper venue under 28 U.S.C.A. §1391(b)(1) because Defendants' principal place of business is in the city and state of New York, and a substantial part of the events that gave rise to the claims in this action took place in this judicial district.

PARTIES

12. Plaintiff Stephen Morris resides in and is a citizen of the State of California. He was employed by Defendants in Defendants' Los Angeles, California office in its Assurance and Advisory Business Services ("AABS") Division, which is the division performing audits, beginning in January of 2005 in the position of Staff 1 and then was subsequently promoted to the position of Staff 2, and then

Senior 1. He ceased working for Defendants in February of 2007.

13. Plaintiff Kelly McDaniel resides in and is a citizen of the State of California. She was employed by Defendants in Defendants' San Jose, California office in its AABS Division beginning in October of 2008. She was hired as Staff 1 and subsequently promoted to the position of Staff 2, and then Senior 1. She ceased working for Defendants in April 2011.

14. Defendant Ernst & Young LLP ("E&Y LLP") is a Delaware limited liability partnership practicing public accountancy pursuant to applicable state laws on a nationwide basis and including, in particular, in California pursuant to a license with the California Board of Accountancy. E&Y LLP is one of the largest privately held professional services businesses and is headquartered at 5 Times Square, New York, New York. It has over 90 offices throughout the U.S. and in excess of 41,535 employees.

15. Upon information and belief, Defendant Ernst & Young U.S., LLP ("E&Y US")(collectively with E&Y LLP, "E&Y") is a Delaware foreign registered limited liability partnership practicing public accountancy pursuant to applicable state laws, and maintains its principal executive office at 5 Times Square, New York, New York.

16. Upon information and belief, Defendants are the United States member firms of an international network of affiliated public accounting firms that operate under the name Ernst & Young. Both of the Defendants meet the statutory requirements under California Law and the FLSA to be deemed the employer of Plaintiffs and all members of the Classes.

17. The Plaintiffs are former employees of E&Y and those similarly situated to the Plaintiffs are former or current employees of E&Y.

PLAINTIFFS, CLASS AND REPRESENTATIVE ALLEGATIONS

18. Defendants were and are professional services businesses engaged in advisory services, assurance (sometimes known as audit services), tax and transactional advisory services. What is generally referred to as an "audit" is the examination of client prepared financial statements made in accordance with Generally Accepted Auditing Standards ("GAAS"), or certain other recognized similar standards, and the expression of an opinion as to whether the client's financial statements are fairly stated and free of material misstatements. Non-partner employees at E&Y are divided into different categories in the audit division, among them Non-Licensed Staff 1, Staff 2, Senior 1 and Senior 2. These four low-level positions do not require a CPA license. The proposed FLSA Class and California Sub-Class consist entirely of employees and former employees in these four positions, and exclude those who are licensed as CPAs.

19. As unlicensed employees remain at the company for longer periods of time, they are promoted generally annually from positions as Staff 1 to positions as Staff 2, Senior 1 and Senior 2, where they continue to perform many of the same or very similar non-exempt tasks in a "lock-step" fashion based on length of employment. Seniors may also be given the opportunity to participate to some degree in the planning and reporting phases of the audit, review of work of Staff, and being in charge in an audit engagement with responsibilities for the essentially minuscule administrative tasks including assigning tasks to others, collecting their work and communication with

managers or partners about audit progress and any matters of significance. In none of these tasks are the Seniors performing any exempt duties.

20. During all times relevant herein, the members of the Classes supported the business of Defendants by working under the direction of their superiors, the managers and partners of Defendants. Such work involved the members of the Classes assisting their superiors in the production of the products and services provided by the Defendants' business to its customers. Staff were required to discuss any significant answers with managers or partners. Seniors were required to discuss any significant issues with managers or partners. Members of the Classes were prohibited from making any decision on any matter which might be material to the audit or to E&Y's opinion on the financial statements without approval by the partner with final responsibility for the audit. Most of the time, approval must first be sought from one or more levels of more senior employees who then obtain approval from the audit partner.

21. Defendants have intentionally limited the potential for individual discretion and independent judgment of members of the Classes in order to maintain quality controls and to limit liability, as well as to comply with legal and professional requirements.

22. State laws, including California law, generally provide that unlicensed employees engaged in audits must work under the control and supervision of a CPA. Similar rules have been promulgated by the American Institute of Certified Public Accountants ("AICPA"), a professional organization for CPAs, and the Public Company Accounting Oversight Board ("PCAOB"), a private non-profit corporation created by the Sarbanes-Oxley Act to oversee the auditors of public companies.

23. Companies whose financial statements are audited are generally referred to as *audit clients*, and the public accounting firms that perform audits are generally referred to as *audit firms, CPA firms, or independent auditors*. The professional practice of auditing financial statements in the United States is regulated and controlled by a mixture of private-sector and public standard setters and governing authorities.

24. Each individual state government issues CPA licenses for practice in that state and issues regulations that govern the work of accounting professionals within that state. There is a National Association of State Boards of Accountancy (NASBA) that is a voluntary association of state boards of accountancy (the common title of the state agency that regulates the practice of public accountancy in that state). NASBA has issued a Uniform Accountancy Act to be used as a model for accountancy laws in the various individual states.

25. All states have adopted the AICPA-administered Uniform CPA Exam. Each individual state, however, decides what else is required for an individual to be licensed and to work within its borders. State laws also identify those areas of service that are restricted to licensed individuals. All states restrict the service of auditing financial statements to licensed individuals.

26. State laws that affect and control CPAs go beyond licensing and include various rules that govern firms and individuals practicing public accountancy including ethics, quality control, and continuing professional education. These additional rules and regulations have a high degree of similarity and are generally patterned after comparable AICPA requirements. For example, ethics requirements generally are adaptations of the AICPA Code of Professional Conduct.

27. California State has adopted detailed laws, rules, and regulations that govern the practice of public accountancy, and which includes sections that define the profession of public accountancy, restrict the practice of public accountancy and use of the title CPA and similar titles, and establish the requirements for a license as a CPA.

28. The practice of the profession of public accountancy in California State includes *attest services.* Attest services require the independence of the licensee and include "any audit to be performed in accordance with generally accepted auditing standards ("GAAS") or other similar standards developed by a federal government agency, commission, or board or a recognized international or national professional accountancy organization. "Certified public accountant" or "CPA" means any person who has received a license from a state as a certified public accountant for the practice of public accountancy. Only a person licensed or otherwise authorized to practice may practice public accountancy or use the title CPA or similar title.

29. To qualify for a license as a CPA, an applicant must fulfill a series of requirements including having received a bachelor's or higher degree in a recognized program in accountancy, meeting an experience requirement, and passing a satisfactory written examination. The written examination used in most states and in California State is the one prepared and administered by the AICPA, the Uniform CPA Exam.

30. The AICPA is a national, not-for-profit entity that exerts substantial influence on the practice of public accountancy in the United States. Before the creation of the PCAOB by the Sarbanes-Oxley Act in 2002, the SEC had delegated responsibility for setting auditing standards (or GAAS) to the AICPA. The AICPA still sets standards

that govern the audits of the financial statements of non-public companies in the United States. The AICPA prepares and administers the Uniform CPA Exam.

31. The AICPA issues and enforces the Code of Professional Conduct (the "Code"). The Code sets ethical requirements for CPAs and states generally use of the Code as a point of reference in adopting their ethical requirements. Under the Code, virtually any matter of significance in connection with providing audit related accountancy service must be reviewed and approved by the CPA in charge of the engagement, who must *at all times* supervise the unlicensed associates who work on the engagement.

32. The roles of the AICPA contribute substantially to the uniformity of auditing practice across the United States.

33. The PCAOB is a not-for-profit entity in charge of standard setting and oversight of both the audits of public companies and the firms that perform those audits. To audit the financial statements of a public company whose securities are traded in the United States, the audit firm must be registered with the PCAOB. The registered firm's audit practice is routinely inspected by PCAOB inspectors to evaluate whether the firm is performing in accordance with professional standards. If the PCAOB becomes aware of departures from professional standards through inspections or other means, the PCAOB can investigate and, if appropriate, discipline the firm and individual auditors. Under the structure created by SOX, the SEC oversees the professional standards set by the PCAOB. The PCAOB's standards apply to the audits of all public companies whose securities are traded in the United States.

34. When the PCAOB became operational in April 2003, it adopted the existing auditing standards previously issued by the AICPA. The PCAOB has adopted several standards of its own since then.

35. Together, the AICPA and PCAOB standards provide fairly specific requirements that apply to the audits of financial statements. These professional standards govern auditing practice throughout the United States.

36. The SEC is a government agency that regulates publicly traded companies and exercises authority over the reports the companies file with it and over the stock exchanges. As previously explained, the SEC must authorize all PCAOB rules and standards before they become effective.

37. On information and belief, most of the audit clients of E&Y in the United States are publicly traded companies or subsidiaries of public corporations.

38. The AICPA, PCAOB, and SEC all have rules that require the auditor of financial statements to be *independent* and that spell out in detail actions that impair independence of the audit firm, including prohibited activities by firm personnel. All the authorities state that performing management functions of a client impairs independence. Thus, no one working on an audit team can be involved in running the business of audit clients. This requirement of independence is uniformly required throughout the United States.

39. E&Y's internal standards provide strict limits on what activities can be performed by employees who are not CPAs. An unlicensed E&Y employee *cannot* (i) commit E&Y to an audit engagement; (ii) approve preliminary engagement activities, including the exercise of judgment

to assess the potential risk of a potential audit engagement; (iii) approve and sign engagement letters; (iv) work without control and supervision of the licensed CPA; (v) approve or depart from the audit plan/program; (vi) approve and sign any document containing a substantive opinion, conclusion or determination, including audit opinions, audit reports, internal control opinions on public companies (SOX 404 reviews), or certify financial statements; or (vii) advise client management on matters of significance. Likewise, it is E&Y's policy that Class members are not permitted to deviate from firm policies and procedures without approval.

40. Plaintiff Morris was an employee of Defendants commencing in January 2005, until February 2007. Throughout that time period, Morris was not a licensed CPA and was assigned to provide services on audit engagements. Initially, his job title was Staff 1. In or about September 2005, he was "promoted" to Staff 2, and in or about September 2006, he was "promoted" to Senior 1. Throughout his employment, Morris regularly worked in excess of 40 hours in a work week. Like all employees in the Covered Positions and Staff 1 through Senior 2 audit employees, he was *required* to work at least 55 hours per week during the busy season which continued from January through March annually, and, in fact, often worked significantly in excess of 55 hours per week. Morris did not receive additional compensation for the overtime hours worked.

41. Plaintiff McDaniel was an employee of Defendants commencing in October 2008, until April 2011. McDaniel became a licensed CPA in December 2010. Throughout her employment she was assigned to provide services on audit engagements. Initially, her job title was Staff 1. In or about September, 2009, she was "promoted" to Staff 2,

and in or about September 2010, she was "promoted" to Senior 1. Throughout her employment, McDaniel regularly worked in excess of 40 hours in a work week. Like all employees in the Covered Positions and Staff 1 through Senior 2 audit employees, she was *required* to work at least 55 hours per week during the busy season which continued from January through March annually, and, in fact, often worked significantly in excess of 55 hours per week. McDaniel did not receive additional compensation for the overtime hours worked.

42. Throughout their employment, Morris and McDaniel performed routine tasks under multiple layers of supervision. The work performed by Plaintiffs and the Classes was not executive, administrative or professional as those terms are defined by Federal and California laws.

43. The great majority of such work by Plaintiffs and members of the Classes included secretarial, clerical, data entry and support work, including filing papers, organizing and assembling documents, taking notes of meetings, entering data into spread sheets, schedules or forms, formatting spreadsheets, conforming data entered on journals, or subsidiary journals to original documents, adding numbers on journals, calculating percentages from numbers on financial statements on journals, and similar tasks. Such tasks require very little or no exercise of independent judgment or discretion, and such discretion or judgments as are exercised are not as to matters which are considered "material," the accounting industry's term for matters of significance. The tasks performed by Plaintiffs and members of the Classes do not require any advanced professional degree or license or the prior completion of any extended course of academic or technical studies in any art or science for the proper performance of these tasks. Limited classroom training and on-the-job

training supplied Plaintiffs and the members of the Classes with the skills necessary to perform their tasks.

44. Many of the tasks performed by members of the Classes were also performed by "interns" who had not completed their undergraduate degrees.

45. Defendants compensated the Plaintiffs and members of the Classes on a "salary only" basis whereby the Plaintiffs and the members of the Classes were paid a fixed salary for all hours worked during each week and no overtime.

46. Neither of the Plaintiffs, nor the other members of the FLSA Class or the California Class, were or are part of any group exempt from the overtime requirements of Federal Law or the Labor Laws of the States and jurisdictions of the United States, including, without limitation, the California Wage Law.

47. Members of the California Class are not "professionals" and did not perform executive or administrative functions as defined by the laws of California, or the FLSA or regulations of administrative interpretation thereof.

FIRST CLAIM FOR RELIEF
Restitution for Failure to Pay Overtime to the Federal Collective
(Violation of FLSA §207)

48. Plaintiffs hereby incorporate by reference all of the allegations of all prior paragraphs as though fully set forth herein.

49. Section 207(a)(1) of the FLSA provides, in pertinent part:

> Except as otherwise provided in this section, no employer shall employ any of his employees

> who in any workweek is engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. §207(a)(1) (2005).

50. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not apply to:

> any employee employed in a bona fide **executive, administrative, or professional capacity** (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary school), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5 except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of his executive or administrative activities, if less than 40 per centuin of his hours worked in the work week are devoted to such activities).

29 U.S.C. §213(a)(1) (2005) (emphasis added).

51. The Section 213(a)(1) exemption for employees employed in a professional capacity is inapplicable because members of the Classes are not employed in a bona

fide "professional" capacity. The skills necessary to perform the tasks actually performed by Plaintiffs and the other members of the FLSA Collective are acquired through experience, on-the-job training apprenticeship, and limited classroom training at Ernst & Young, as well as through self-study, but not as a result of undergraduate or graduate accountancy training. To the extent that training in accounting terminology or double entry bookkeeping is useful for the performance of the jobs of members of the Classes, the necessary training and skills are those of an experienced bookkeeper.

52. The Section 213(a)(1) exemption for executive or administrative personnel also do not apply to members of the FLSA Collective.

53. For purposes of the FLSA, the employment practices of Defendants were and are uniform throughout the United States in all respects material to the claims asserted in this Complaint and the affirmative defenses applicable to these claims. Nationally circulated audit manuals and audit practices, policies, agendas and templates are prepared and circulated by Defendants and set forth the nationally applicable standard practices for the duties to be prepared by persons working on audits.

54. There are no other exemptions applicable to Plaintiffs and/or the other members of the FLSA Collective.

55. Plaintiffs and other members of the FLSA Collective, either regularly or from time to time, worked more than forty (40) hours per week for Defendants, and received no premium pay for hours worked in excess of forty (40) hours per week.

56. In committing the wrongful acts alleged to be in violation of the FLSA, Defendants acted willfully in that they knowingly, deliberately and intentionally failed to

pay overtime to Plaintiffs and the other members of the FLSA Collective.

57. As a result of Defendants' failure to pay overtime, Plaintiffs and the other members of the FLSA Collective were damaged in an amount to be proven at trial.

58. Therefore, Plaintiffs demand that they and the members of the FLSA Collective be paid overtime compensation as required by the FLSA for every hour of overtime worked in any work week for which they were not compensated, plus liquidated damages, and attorneys' fees as provided by law.

SECOND CLAIM FOR RELIEF
Restitution for Failure to Pay Overtime to the California Class
(California Labor Code Section 1194)

59. Plaintiffs hereby incorporate each and every allegation contained in this Complaint above and re-allege said allegations as though fully set forth herein.

60. At all relevant times, the Plaintiffs and the California Class members were required to work in excess of eight hours during the workday and in excess of forty (40) hours during the workweek and/or worked more than six consecutive days in a workweek.

61. During all relevant times the Wage Order No. 4 of the California Industrial Welfare Commission provided that "nonexempt employees must be paid an overtime premium for all hours worked in excess of eight during the workday and in excess of 40 during the workweek, as well as for work performed on the seventh workday in a work week."

62. Although the Plaintiffs and the California Class members worked overtime as that term was defined in the

relevant wage orders, Defendants failed and refused to pay the legally required state overtime premiums.

63. Therefore, Plaintiffs, on their own behalves and on behalf of all California Class members, demand overtime compensation as provided under California law, liquidated damages, and attorneys' fees.

THIRD CLAIM FOR RELIEF
Overtime and Unpaid Wages to the California Class
(California Labor Business and Professions Code "17200, et seq)

64. Plaintiffs hereby incorporate each and every allegation contained in this Complaint and re-allege said allegations as though fully set forth herein.

65. Throughout the above-described period, Defendants repeatedly misrepresented to the members of the Classes and the general public that the members of the Classes were "professional" or other sorts of employees exempt from the overtime laws of the State of California. The Defendants also failed to require or have the members of the Classes take specified paid and/or unpaid meal and rest breaks as required by California law and did not pay members of the Classes an hour of additional wages per day for such un-received break time, as required by California law.

66. The misrepresentations and omissions by the Defendants gave Defendants a competitive advantage over other employers who legitimately paid their workers the proper overtime wages and other wages required by California law and who also gave the employees the meal and rest breaks required by California law or the additional wages required by California law in lieu thereof.

67. Defendants' conduct described in this Complaint constitutes an unlawful business practice in violation of the provisions of Business and Professions Code "17200, *et seq.*

68. Therefore, Plaintiffs pray for restitution and injunctive relief for themselves and all California Class members for all wages due and an order pursuant to Business & Professions Code Section 17203 to cease from failing to pay overtime wages to workers employed or who render services to Defendants within California.

FOURTH CLAIM FOR RELIEF
Statutory Interest on Unpaid Wages to the California Class
(Labor Code Section 218.6)

69. Plaintiffs hereby incorporate each and every allegation contained in this Complaint above and re-allege said allegations as though fully set forth herein.

70. California Labor Code Section 218.6 state, "In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

71. Subdivision (b) of Section 3289 of the California Civil Code states, "If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach."

72. Therefore, Plaintiffs, on their own behalves and all California Class members', demand interest on the

amount of wages due weekly at the rate of 10% per annum as required by law.

FIFTH CLAIM FOR RELIEF
Waiting Penalties to the California Class
California Labor Code Section 203)

73. Plaintiffs hereby incorporate each and every allegation contained in this Complaint above and re-allege said allegations as though fully set forth herein.

74. California Labor Code Section 203 states, "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

75. The Plaintiffs and the majority of members of the Classes terminated employment more than 30 days prior to the filing of this lawsuit.

76. Therefore, Plaintiffs, on their own behalves and all California Class members', demand waiting penalties according to law.

SIXTH CLAIM FOR RELIEF
Unpaid Wages for Worked Break Time to the California Class
(California Labor Code Section 226.7)

77. Plaintiffs hereby incorporate each and every allegation contained in this Complaint above and re-allege said allegations as though fully set forth herein.

78. Pursuant to California Labor Code Section 226.7, and the wage orders issued pursuant to said statute, the Plaintiffs and the California Class members were entitled

to paid 10 minute breaks for every four hours of daily employment and an unpaid meal break of 30 minutes after five hours of daily employment.

79. Although the Plaintiffs and the California Class members regularly worked for amounts of time each day that would entitle them to the paid and unpaid rest and meal breaks provided for under California Labor Code Section 226.7, they often did not receive such daily rest and meal breaks, and they did not receive one hour of additional pay on the days they did not receive such breaks.

80. Therefore, Plaintiffs, on their own behalves and all California Class members', demand the payment of an additional one hour of pay for each day that they were not provided with the breaks required by California law.

WHEREFORE, Plaintiffs, on behalf of themselves and the other members of the FLSA Class and the California Class, demand judgment in their favor against Defendants, individually, jointly and severally, for:

A. Compensatory damages, including restitution for both regular and overtime compensation due Plaintiffs and the other members of the FLSA Class and the California Class during the applicable Federal Eligibility Period and the California Eligibility period, plus liquidated damages and interest thereon at the statutory rate;

B. An order temporarily, preliminarily, and permanently enjoining and restraining Defendants from engaging in similar unlawful conduct as set forth herein;

C. Imposition of a constructive trust upon the assets of the Defendants to the extent of the sums due to Plaintiffs and the other members of the FLSA Class and California Class;

D. The California Class demands premium pay for overtime hours worked according to the Wage Orders of the Industrial Welfare Commission applicable at the time work was performed, as well as one hour of additional wages for each day that they worked and were not provided with the breaks required by California law and waiting penalties as provided for under Labor Code Section 203;

E. The California Class also demands interest at the legal rate of 10% per annum, from each week payment of wages were due for each and every California Class member;

F. Reasonable attorneys' fees, litigation expenses and costs of suit;

G. Such other and further relief as the Court deems just and equitable.

Dated: April 10, 2012

FOLKENFLIK & MCGERITY

By: /s/ _____

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Policies and Practices Repository, United States
Employment Policies
E&Y Common Ground
Dispute Resolution Program

ERNST & YOUNG
Policy and Practice Statement
Ernst & Young LLP

SCORE No.	AA7521 Revision date of this Program Document April 2006. Common Ground Program originally adopted August 2002 (SCORE No. AA7520).
Effective Date	25-May-2006
Supersedes	AA7520
Distribution	Personnel
Issue Date	25-Apr-2006
Issuer(s)	Kathryn A. Oberly
Issuing Function(s)	General Counsel's Office

E&Y COMMON GROUND DISPUTE RESOLUTION PROGRAM

I. Preamble

The Common Ground Dispute Resolution Program, as outlined in this document (the "Program"), is intended to provide a fair, prompt, and cost-effective mechanism for resolving disputes. The Program is the sole method for resolving disputes within its coverage. It is not intended to limit or expand substantive rights that would otherwise be available under law.

II. Coverage of Program

A. Entities and persons covered.

1. "Firm" means Ernst & Young LLP and Ernst & Young U.S. LLP, all of their subsidiaries and affiliates, and any successor entities (together, the "Entities"). It also includes all partners, principals, agents and employees of the Entities against whom a claim is asserted for acts arising out of their duties for an Entity.

2. "Employee" means an applicant for employment or an employee of the Firm who is bound by the terms and conditions of the Program, and anyone else who may assert a claim belonging to, obtained from, or on behalf of that person. A person remains an Employee for purposes of the Program even if the person is not, or is no longer, employed by the Firm, unless the person becomes a partner or principal in the Firm. (Partners and principals are covered by a different dispute resolution program.) ***An Employee indicates his or her agreement to the Program and is bound by its terms and conditions by beginning or continuing employment with the Firm after May 25, 2006*** (the "Effective Date").

B. Disputes covered.

1. All claims, controversies or other disputes between the Firm and an Employee that could otherwise be resolved by a court, except as stated below ("Covered Disputes"), shall be resolved through the Program. Both the Firm and the Employee give up any right to resolve any Covered Dispute through any other means. ***Neither the Firm nor an Employee will be able to sue in court in connection with a Covered Dispute.***

2. The following types of claims are *not* Covered Disputes:

a. A claim for temporary, preliminary or interim injunctive relief relating to the period before the Arbitrator (as defined below) is selected, including temporary restraining orders or preliminary injunctions.

b. Statutory claims for workers' compensation or unemployment insurance.

c. A claim that is subject to a different dispute resolution program or an explicit exhaustion of remedy requirement (such as a claim relating to an employee benefit plan of the Firm, or a bonus, profit or gain sharing, or incentive compensation program of the Firm).

C. *Examples of types of disputes covered.* Examples of Covered Disputes include:

1. Claims based on federal statutes such as Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Equal Pay Act, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Employee Retirement Income Security Act and the Worker Adjustment and Retraining Notification Act, all as have been or may be amended.

2. Claims based on state statutes and local ordinances, including state and local anti-discrimination laws.

3. Claims based on common law theories such as tort and contract.

4. Claims concerning wages, salary, and incentive compensation programs, except as provided in paragraph II. B. 2. above.

5. Claims concerning application, interpretation and enforcement of the Program.

These examples are not exclusive and are provided only as examples of some of the kinds of Covered Disputes that may exist. All Covered Disputes, whether or not listed here, must be resolved through the Program.

III. Phase I - Mediation

A. *Definition.* If a Covered Dispute arises, the parties will try to resolve the Covered Dispute through mediation as set forth below.

B. *Provider.* The Provider for Phase I shall be the Employee's choice of one of the following dispute resolution organizations:

1. The International Institute for Conflict Prevention and Resolution ("CPR"),

2. The American Arbitration Association ("AAA"), or

3. JAMS.

If the Employee does not choose a Provider within 10 days of Phase I being started, the Firm may choose the Provider.

C. *Initiation.* A party may start Phase I by giving the other party notice in writing. If contemplated by the mediation procedures of the Provider, the Firm will contact the Provider on behalf of the parties.

D. *Mediator.* The parties may agree on a mediator. If the parties do not agree, a party may request that a mediator be appointed by the Provider, but any mediator appointed

must be acceptable to each party. The mediator will help the parties attempt to resolve the Covered Dispute by agreement.

E. *Mediation Rules.* If the Provider is CPR or AAA, the relevant mediation rules or procedures of the Provider as in effect on the Effective Date will be used in conducting the mediation to the extent such rules are consistent with the Program. The rules may be viewed *here* (for CPR) and *here* (for AAA). If the Provider is JAMS, the mediation will be conducted as specified by the mediator and consistent with the Program.

F. *Attorney Representation.* An Employee may choose to be represented by a lawyer in the mediation, or may choose not to use a lawyer. If the Employee is not a law school graduate and elects not to be represented by a lawyer, the Firm will not use a lawyer.

G. *Fees and Expenses of Mediation.* An Employee starting Phase I will pay an amount equal to the fee that the Employee would pay to file a lawsuit asserting the same claim in the court of general jurisdiction in the county or independent city where the Employee's primary place of employment is or was located (the "Court Equivalent Fee") or the Employee's fee specified in the Mediation Rules, whichever is less. The Firm will pay any other fees and expenses charged by the Provider or the mediator. An Employee may contribute a greater portion if the Employee so chooses, up to half of the total.

H. *Attorney's Fees.* Each party shall be responsible for the party's own attorney's fees and related expenses.

I. *Termination of Phase I.* Phase I shall end after 90 days, whether or not the Covered Dispute has been resolved, unless the parties have agreed otherwise in writing.

IV. Phase II - Arbitration

A. *Definition.* If a Covered Dispute is not resolved in Phase I, either party may choose to proceed to binding arbitration, as provided below.

B. *Phase I Default.* If a party files a lawsuit relating to a Covered Dispute in court in violation of the terms of the Program, the other party may choose to proceed directly to Phase II or to seek an order requiring the party who filed the lawsuit to satisfy the requirements of the Program.

C. *Provider.* The Provider for Phase II shall be the Employee's choice of CPR, AAA, or JAMS. It need not be the same provider used in Phase I. If the Employee does not select a Provider within 10 days of Phase I being started, the Firm may choose the Provider.

D. *Arbitration Rules.* The arbitration will be conducted in accordance with the Program and the relevant arbitration rules of the Provider as in effect on the Effective Date ("Arbitration Rules"). The relevant rules may be viewed *here* (for CPR), *here* (AAA), and *here* (JAMS). If there is any conflict between the Arbitration Rules and the Program, the Program will take precedence.

E. *Initiation.*

1. A party may start Phase II by giving the other party notice in writing.

2. If the Arbitration Rules provide for the filing of a demand or request for arbitration with the Provider, the party starting Phase II shall file such demand or

request in accordance with the Arbitration Rules, and the arbitration shall not proceed until the Provider has notified the parties that it agrees to assist with the arbitration in accordance with the requirements of the Program. If the Provider does not so agree, an alternative Provider shall be selected by the party starting Phase II or, if no Provider is available, by application to the court of general jurisdiction in the county or independent city where the Employee's primary place of employment is or was located.

F. *Attorney Representation.* Either party may choose to be represented by a lawyer in the arbitration, or may choose not to use a lawyer.

G. *Number and Selection of Arbitrators.*

1. If the amount in controversy is $1 million or less, the arbitration will be conducted by one arbitrator. If the amount in controversy is more than $1 million, the arbitration shall be conducted by a panel of three arbitrators. In no circumstances shall a single arbitrator have power to make any award in excess of $1 million.

2. A single arbitrator shall be selected as provided in the Arbitration Rules. A three arbitrator panel shall be selected as follows: each party shall select one arbitrator and inform the Provider of the selection. The Provider will invite the party-selected arbitrators to serve without revealing which party had selected each arbitrator. Once appointed, the two party-selected arbitrators shall select the third arbitrator.

3. All party-appointed arbitrators and single arbitrators shall be selected from:

a. For AAA, the regional Employment Dispute Resolution Roster, or an equivalent list if such list is unavailable;

b. For CPR, the regional Employment Panel of Distinguished Neutrals, or an equivalent list if such list is unavailable; or

c. For JAMS, a list of at least ten potential arbitrators to be provided to the parties by the Provider.

4. No person may serve as an arbitrator unless that person has agreed in writing to be bound by the requirements of the Program.

5. The single arbitrator or the panel of three arbitrators, as the case may be, is referred to below as the "Arbitrator."

H. *Arbitrator Competence.* Any issue about whether a claim, controversy or dispute is subject to arbitration, or about how the terms and conditions of the Program should be interpreted or whether they are binding on the parties, will be decided by the Arbitrator.

I. *Venue.* The venue of the arbitration will be, and the hearing, if any, will be conducted in, the county or independent city where the Employee's primary place of employment is or was located, unless the parties agree otherwise.

J. *Law Applicable to Arbitration.* In deciding a Covered Dispute, the Arbitrator will apply the substantive law, including burdens of proof, that would be applied by a court in the venue of the arbitration. The Arbitrator may grant any relief that could be granted by such a court, but will have no power to grant any other relief.

K. *Separate Proceedings.* If there is more than one Covered Dispute between the Firm and an Employee, all such Covered Disputes may be heard in a single proceeding. Covered Disputes pertaining to different Employees will be heard in separate proceedings.

L. *Discovery.* Consistent with the expedited nature of arbitration and the needs of the parties, each party may obtain discovery relevant to the Covered Dispute as follows:

1. Each party may obtain reasonable discovery of documentary evidence.

2. Each party may also take the deposition of (i) three individuals of the party's choosing for no more than seven hours each, and (ii) the deposition of any expert witness designated by the other party.

3. The Arbitrator shall permit additional discovery upon a finding that a party requires it to adequately arbitrate a claim, but shall protect the parties against discovery that is unduly burdensome.

4. The Arbitrator will issue subpoenas to third parties for such documentary evidence on the reasonable request of a party, if permitted by law.

M. *Witnesses.* The parties shall exchange witness lists at least 10 days prior to any hearing. A party may not present a witness at a hearing if the name of the witness has not been provided to the opposing party in accordance with this rule.

N. *Summary Adjudication.* If, after giving the parties due opportunity to comment on the matter, the Arbitrator determines that all or part of a party's claim fails to state a legal claim, or that there is no genuine issue of fact as to all or part of a party's claim, the Arbitrator shall dismiss

the claim or relevant portion thereof, or grant summary judgment for any part thereon, as appropriate.

O. *Conduct of Hearing.* At an arbitration hearing, the parties shall have the right to present proof through testimony and documentary evidence, and to cross-examine witnesses who testify at the hearing.

P. *Fees and Expenses.* Fees and expenses of the arbitration will be handled as follows:

1. Filing and administrative fees. The Firm will pay all filing and administrative fees in connection with the arbitration, except as follows:

a. An Employee starting Phase II shall contribute the Court Equivalent Fee or the Employee's fee specified in the Arbitration Rules, whichever is less. An Employee who paid the Court Equivalent Fee in Phase I need not contribute when initiating Phase II.

b. An Employee may contribute a greater portion of filing and administrative fees if the Employee so chooses, up to half.

2. Arbitrator fees and other costs. The parties' intent is for Arbitrator fees and other costs of the arbitration, other than filing and administrative fees, to be shared equally to the extent permitted by law and the Arbitration Rules. However, the portion of the cost to be paid by an Employee will be adjusted to the extent, if any, necessary for the parties' agreement to arbitrate to be enforced.

3. Party attorney fees and other expenses. Each party will be responsible for the party's own attorney's fees and related expenses, but the Arbitrator will have authority to provide for reimbursement of

the Employee's attorney's fees, in whole or part, in accordance with applicable law or in the interest of justice.

Q. *Award.* The Arbitrator shall render an award and written opinion in the form typically rendered in labor arbitrations. The Arbitrator is expected to issue the award and opinion no later than thirty (30) days from the date the arbitration hearing concludes or post-hearing briefs (if requested) are received, whichever is later, but a failure of the Arbitrator to meet this or any other deadline shall not affect the validity of the arbitration and award. The opinion shall set forth the factual and legal basis for the award and shall include a summary of the issues, including the nature of the dispute, the relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claims. An award shall be final and binding on the parties to the fullest extent permitted by law. Judgment on any award may be entered and enforced in any court of competent jurisdiction.

V. Other Matters

A. *Confidentiality.* All aspects of Phase I and Phase II, including any award made, shall be confidential, except to the extent disclosure is required by law or applicable professional standards, or is necessary in a later proceeding between the parties.

B. *At-Will Employment.* The Program does not change the at-will status of Employees and does not create any contract between an Employee and the Firm, other than as to those matters expressly addressed in the Program.

C. *Notice.* Any notice required to be given to an Employee shall be directed to the Employee's last known address as reflected in the records of the Firm. Any notice required to be given to the Firm shall be directed to the General Counsel's Office at the Firm's principal location in New York City, to the attention of Rita A. Hernandez, Deputy General Counsel, or her successor or designee.

D. *Administrative Process.*

1. The Program does not affect the right of any Employee to file a charge with, make a complaint to, or bring any matter to the attention of ("File a Charge") the U.S. Equal Employment Opportunity Commission, a state or local discrimination agency, or any other administrative body. However, if an Employee who has Filed a Charge relating to a Covered Dispute has not fully pursued the dispute through the Program, the Firm may ask the agency or body in question to defer its processing or investigation of the Charge until the Program has been completed.

2. Notwithstanding the Filing of a Charge, an Employee may seek monetary relief with respect to a Covered Dispute only through the Program.

E. *Termination or Amendment.*

1. The Firm may propose termination or amendment of the Program by providing notice to Employees through the Daily Connection or other electronic notice on at least two occasions. An Employee indicates his or her agreement to the proposed amendment or termination, and such proposed change becomes effective as to that Employee, by continuing his or her employment with the Firm for at least thirty days after the second notice is provided.

2. Termination or amendment will not affect a Covered Dispute as to which Phase I had been initiated when the termination or amendment was proposed.

3. If a proposed termination or amendment is determined not to be effective in whole or part for any reason, including lack of sufficient notice, lack of agreement, invalidity of a Program provision, or otherwise, the Program as it existed at the time of the proposed termination or amendment shall remain in effect to the extent that the proposed termination or amendment is determined not to be effective.

F. *Due Process and Severability.*

1. The Program is intended to be fair to both sides and to provide access by Employees at an affordable cost. If it is determined that all or part of the Program is unenforceable for reasons pertaining to the fairness of the procedures or the cost, the Firm shall have the option to modify the Program as appropriate to address the concern.

2. If any portion of the Program is held to be invalid or unenforceable, or if any portion of the Program would, if effective, violate applicable law, that portion of the program shall be void and of no effect, but the remainder of the Program shall remain in full force and effect.

G. *Choice of Law Governing Program.* The Program, these procedures, and any arbitration award that may result from them shall be governed by the Federal Arbitration Act and, to the extent, if any, that such Act is held not to apply, to the state law, including judicial interpretations, applicable in the State of New York, provided that principles of conflicts of laws shall not be applied.